

AMENDED IN ASSEMBLY APRIL 11, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2179**

**Introduced by Assembly Member Wesson**

February 23, 2000

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An act to add Section 330d to the Penal Code, relating to gambling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2179, as amended, Wesson. Gambling: prohibited online gambling games.

(1) Existing law prohibits banking or percentage games played with cards, dice, or devices, including roulette, faro, and twenty-one, lottery games, other than charitable bingo and the games of the California State Lottery, the operation, possession, sale or control of slot machines, as defined, and sports wagering and other forms of bookmaking and pool selling, other than licensed parimutuel wagering on horse races, and provides that any person who operates or bets at these prohibited gambling games is guilty of a crime and is punishable by a misdemeanor or felony, as specified. Existing court decisions generally provide that contracts concerning illegal gambling transactions, and any losses or debts thereby incurred, are against public policy and are unenforceable in this state.

This bill would state finding and declarations of the Legislature with regard to online gambling games, and would provide that it is unlawful for any person to operate or bet

against any prohibited online gambling game, as defined, for money, checks, credit, or any other representative of value. This bill would provide that every person who operates or offers for play any prohibited online gambling game to any person physically located in this state at the time of the transaction, or who operates such a game from a host server, as defined, that is physically located in this state at the time of the transaction, is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per transaction, or by both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person or entity who knowingly solicits or facilitates another person who is physically located in this state to play or bet at any prohibited online gambling game in violation of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed 90 days, a fine not to exceed \$1,000 per violation, or by both that fine and imprisonment. The bill would provide that a person or entity “knowingly” violates these provisions if he or she knows or has reason to know that the participation of persons in this state in online gambling games is unlawful, or if he or she has received a warning from the Attorney General to that effect. This bill would provide that these provisions shall not apply with respect to advertisements that are not specifically directed towards this state and which contain adequate disclosure of the illegality of these games, or to Internet service providers, web pages and search engines, or other indexes, networks, or network equipment which act as mere functional intermediaries between a patron and an online gambling enterprise and which do not reasonably constitute an advertisement or promotion of that enterprise. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide that every person who plays or bets at or against a prohibited online gambling game while physically located within this state is guilty of an infraction punishable by a fine not to exceed \$100 per transaction. By creating a new crime, this bill would impose a state-mandated local program.



This bill would also provide that, notwithstanding any other provision of law, and in addition to any other limitation on the enforceability of gambling debts, losses, and transactions, debts incurred as a result of wagering on a prohibited online gambling game are not enforceable in this state.

This bill would also provide that notwithstanding any other provision of law, the Attorney General is expressly authorized to enforce these provisions, and in addition to bringing criminal actions shall have the authority to file civil actions, issue cease and desist letters, and take other actions as necessary to maximize compliance with these provisions by both online gambling enterprises and individual citizens of this state, and would specifically authorize the Attorney General to review electronic, print, and other advertisements of online gambling enterprises for accuracy, and demand that advertisements appearing in this state disclose that these online games are illegal in this state.

This bill would provide that its provisions are severable, and that if any of its provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect.

This bill would declare the intent of the Legislature to codify ~~numerous court decisions relating to illegal gambling and the nonenforceability of gambling losses and debts, with application to prohibited online gambling in particular, insofar as they hold that gambling losses and debts from illegal gambling, from online gambling in particular, are unenforceable,~~ and that credit card issuers and other lenders doing business in this state shall take notice ~~of the nonenforceability of~~ that these debts are unenforceable and take appropriate action to protect their legitimate business interests.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares  
2 the following:

3 (1) Online gambling threatens the health, safety, and  
4 welfare of the citizens of this state, because, unlike  
5 controlled gambling conducted within licensed gambling  
6 establishments and tribal casinos, online gambling is  
7 completely unregulated.

8 (2) The unregulated nature of online gambling  
9 enterprises, combined with the fact that many online  
10 gambling providers are located beyond the criminal  
11 jurisdiction of this state or of the United States, poses an  
12 unacceptable risk of fraudulent business practices to  
13 patrons of these establishments.

14 (3) Due to the anonymous nature of the Internet,  
15 online gambling establishments are unable to accurately  
16 assess the age or identity of online patrons, and thus these  
17 enterprises facilitate illegal gambling by minors and  
18 other persons prohibited from engaging in gambling.

19 (4) Online gambling enterprises routinely and  
20 incorrectly assert that persons in this state can legally  
21 participate in online gambling games, and thus these  
22 enterprises engage in false and misleading advertising.

23 (b) It is the intent of the Legislature in enacting this  
24 act to remove any ambiguity as to the illegality of online  
25 gambling in this state.

26 SEC. 2. Section 330d is added to the Penal Code, to  
27 read:

28 330d. (a) Notwithstanding any other provision of  
29 law, and in addition to the prohibitions and limitations on  
30 gambling contained in this chapter and in Chapter 9  
31 (commencing with Section 319), it is unlawful for any  
32 person to operate or bet at or against any prohibited  
33 online gambling game, as defined in subdivision ~~(d)~~ (f),  
34 for money, checks, credit, or any other representative of  
35 value.

36 (b) Every person who deals, carries on, opens or  
37 causes to be opened, or who conducts, operates, or offers  
38 for play any prohibited online gambling game played for

1 money, checks, credit, or any other representative of  
2 value, to any person that he or she knows or has reason to  
3 know is physically located within this state at the time of  
4 the transaction, is guilty of a misdemeanor punishable by  
5 imprisonment in a county jail not to exceed 90 days, a fine  
6 not to exceed one thousand dollars (\$1,000) per  
7 transaction, or by both that imprisonment and fine.

8 (c) Every person who deals, carries on, opens or causes  
9 to be opened, or who conducts, operates, or offers for play  
10 any prohibited online gambling game played for money,  
11 checks, credit, or any other representative of value, from  
12 a host server, as defined in subdivision (g), that is  
13 physically located within this state at the time of the  
14 transaction, is guilty of a misdemeanor punishable by  
15 imprisonment in a county jail not to exceed 90 days, a fine  
16 not to exceed one thousand dollars (\$1,000) per  
17 transaction, or by both that imprisonment and fine.

18 (d) (1) Every person or entity who knowingly solicits  
19 or facilitates another person who is physically located in  
20 this state to play or bet at any prohibited online gambling  
21 game in violation of this section is guilty of a misdemeanor  
22 punishable by imprisonment in a county jail not to exceed  
23 90 days, a fine not to exceed one thousand dollars (\$1,000)  
24 per violation, or by both that fine and imprisonment. For  
25 purposes of this subdivision, a person or entity  
26 “knowingly” solicits or facilitates a violation of this  
27 provision if he or she knows or has reason to know that the  
28 participation of persons in this state in online gambling  
29 games is unlawful, or if he or she has received a warning  
30 from the Attorney General to that effect.

31 (2) This subdivision shall not apply with respect to  
32 advertisements that are not specifically directed towards  
33 the residents of this state and which contain adequate  
34 disclosure of the illegality of these games, nor shall this  
35 subdivision apply with respect to Internet service  
36 providers, web pages containing hypertext links, web  
37 search engines, networks, routers, hubs, or other  
38 directories, indexes, devices, or equipment which act as  
39 mere functional intermediaries between a patron and an  
40 online gambling enterprise and which do not reasonably

1 constitute an advertisement or promotion of that  
2 enterprise.

3 (e) Every person who plays or bets at or against any  
4 prohibited online gambling game for money, checks,  
5 credit, or any other representative of value, while that  
6 person is physically located within this state, is guilty of an  
7 infraction punishable by a fine not to exceed one hundred  
8 dollars (\$100) per transaction.

9 (f) A prohibited online gambling game, for purposes  
10 of this section, means any banking or percentage game  
11 played with dice, cards, or devices, as well as any of the  
12 following games, including any common variations  
13 thereon or facsimiles thereof, that are conducted,  
14 operated, or offered for play over the Internet:

15 (1) Craps.

16 (2) Roulette.

17 (3) Blackjack or twenty-one.

18 (4) Slot machines.

19 (5) Poker, including stud poker, draw poker,  
20 Caribbean stud poker, or Pai gow poker.

21 (6) Baccarat.

22 (7) Bingo, including bingo pulltab games.

23 (8) Sportsbook wagering, including wagering on the  
24 outcome, statistics, or any other aspect of a sporting  
25 event, other than lawful wagering on a horse race.

26 (9) Lottery games, other than games lawfully  
27 conducted by the California State Lottery.

28 (g) A host server, for purposes of this section, means  
29 the computer or network of computers on which an  
30 online gambling game is operated. Host server does not  
31 include any computer, hub, or other device, or any  
32 independent computer network, that acts as an  
33 intermediary in the transfer of Internet Protocol (IP)  
34 packets to and from the host server, provided that the  
35 intermediary device is not owned or controlled by the  
36 person or entity, or a subsidiary thereof, that owns or  
37 controls the host server.

38 (h) Notwithstanding any other provision of law, and in  
39 addition to any other limitation on the enforceability of  
40 gambling debts, losses, and transactions, debts incurred as

1 a result of wagering on a prohibited online gambling  
2 game, as defined in subdivision (d), are not enforceable  
3 in this state.

4 (i) Notwithstanding any other provision of law, the  
5 Attorney General is expressly authorized to enforce this  
6 section, and in addition to bringing criminal actions shall  
7 have the authority to file civil actions, issue cease and  
8 desist letters, and take other actions as necessary to  
9 maximize compliance with these provisions by both  
10 online gambling enterprises and individual citizens of this  
11 state. The Attorney General is specifically authorized to  
12 review electronic, print, and other advertisements of  
13 online gambling enterprises for accuracy, and may  
14 demand that advertisements appearing in this state  
15 disclose that these online games are illegal in this state.

16 (j) The provisions of this section are severable. If any  
17 provision of this section or its application is held invalid,  
18 that invalidity shall not affect other provisions or  
19 applications that can be given effect without the invalid  
20 provision or application.

21 SEC. 3. It is the intent of the Legislature in enacting  
22 Section 330d of the Penal Code to codify ~~numerous~~  
23 ~~decisions of the courts of this with respect to illegal~~  
24 ~~gambling the nonenforceability of gambling losses and~~  
25 ~~debts, with application to prohibited online gambling in~~  
26 ~~particular state insofar as they hold that gambling losses~~  
27 ~~and debts from illegal gambling, from online gambling in~~  
28 ~~particular, are unenforceable.~~ It is also the intent of the  
29 Legislature in enacting this section that credit card  
30 issuers and other lenders doing business in the State of  
31 California take notice ~~of the nonenforceability of that~~  
32 ~~these debts are unenforceable~~ and take appropriate  
33 action to protect their legitimate business interests.

34 SEC. 4. No reimbursement is required by this act  
35 pursuant to Section 6 of Article XIII B of the California  
36 Constitution because the only costs that may be incurred  
37 by a local agency or school district will be incurred  
38 because this act creates a new crime or infraction,  
39 eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section

1 17556 of the Government Code, or changes the definition  
2 of a crime within the meaning of Section 6 of Article  
3 XIII B of the California Constitution.

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